



February 28, 2014

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## ENGROSSED HOUSE BILL No. 1346

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DIGEST OF HB 1346 (Updated February 26, 2014 12:55 pm - DI 102)

**Citations Affected:** IC 22-4; IC 22-4.1.

**Synopsis:** Unemployment insurance. Adds language concerning the public policy involved in the application and payment of unemployment benefits (benefits). Removes any burden of proof from the determination of eligibility for benefits and the determination of gross misconduct. Repeals provisions concerning the process for determining a positive drug test for purposes of an individual's disqualification for benefits. Removes language concerning a department of workforce development's (department) rule or policy regarding an employer's filing of a notice in connection with an individual, group, or mass separation arising from a vacation period. Provides that supplemental unemployment insurance benefits are not deductible income if the eligibility for benefits is conditioned upon the signing of a release of employment related claims against the claimant's employer. Provides that holiday and vacation pay are deductible income for the week in which the holiday or vacation occurs. Redefines  
(Continued next page)

**Effective:** July 1, 2014.

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### Leonard, Morris, Hamm

(SENATE SPONSORS — BOOTS, KRUSE)

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January 15, 2014, read first time and referred to Committee on Employment, Labor and Pensions.

January 21, 2014, reported — Do Pass.

January 27, 2014, read second time, amended, ordered engrossed.

January 28, 2014, engrossed. Read third time, passed. Yeas 65, nays 28.

#### SENATE ACTION

February 10, 2014, read first time and referred to Committee on Pensions and Labor.

February 27, 2014, amended, reported favorably — Do Pass.

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EH 1346—LS 7024/DI 102



"employer" for purposes of participation in the unemployment insurance system as an employing unit that: (1) has incurred liability for wages payable to one or more individuals; or (2) incurs liability for payment of wages of at least \$1 in any calendar quarter during the current or immediately preceding calendar year. Provides that a benefits overpayment includes any week for which the failure to disclose or falsification of a fact caused benefits to be paid improperly. Provides that, when an individual's most recent separation from employment is a disqualifying separation, the individual must earn remuneration from employment for eight weeks and the remuneration must equal or exceed eight times the weekly benefit amount before the individual again qualifies for benefits. Provides that payment of private unemployment benefits that is conditional upon the signing of a release of employment related claims against the employer is severance pay and is deductible income. Increases from 15 to 30 days the time in which a party has to file an appeal of a review board's decision with the court of appeals. Authorizes the use of money in the special employment and training services fund (fund) for the prevention, detection, and recovery of delinquent contributions and penalties and improper benefit payments. Requires Vincennes University and Ivy Tech Community College to meet performance standards determined by the unemployment insurance board when receiving grants from the fund to provide apprenticeship programs, journeyman upgrade training, and other training and counseling assistance. Updates references to the high school equivalency diploma program (program). Corrects a reference to the rulemaking body for the program.



February 28, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1346

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-4-1-2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2014]: **Sec. 2. (a) Unemployment benefits are paid from state  
4 funds and are not considered paid from any special insurance plan  
5 or by an employer. An application for unemployment benefits is  
6 not considered a claim against an employer, but is considered a  
7 request for unemployment benefits from the unemployment  
8 insurance benefit trust fund.**  
9 **(b) The commissioner is responsible for the proper payment of  
10 unemployment benefits without regard to the level of interest or  
11 participation in any determination or appeal by an applicant or an  
12 employer.**  
13 **(c) An applicant's entitlement to unemployment benefits is  
14 determined based on the information that is available without  
15 regard to a burden of proof. An agreement between an applicant**

EH 1346—LS 7024/DI 102



1 and an employer is not binding on the commissioner in  
 2 determining an applicant's entitlement to unemployment benefits.

3 (d) There is no presumption of entitlement or nonentitlement to  
 4 unemployment benefits. There is no equitable or common law  
 5 allowance for or denial of unemployment benefits.

6 SECTION 2. IC 22-4-2-40 IS REPEALED [EFFECTIVE JULY 1,  
 7 2014]. Sec. 40: As used in this article, "drug test" means a test that  
 8 contains at least a five (5) drug panel that tests for the following:

9 (1) Amphetamines;

10 (2) Cocaine;

11 (3) Opiates (2,000 ng/ml);

12 (4) PCP;

13 (5) THC.

14 A drug test described in this section must be performed at a United  
 15 States Department of Health and Human Services certified laboratory;  
 16 with specimen collection performed by a collector certified by the  
 17 United States Department of Transportation and the cost of the drug  
 18 test paid by the employer.

19 SECTION 3. IC 22-4-3-4, AS AMENDED BY P.L.6-2012,  
 20 SECTION 151, IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) Except as provided in  
 22 subsection (b); An individual is not totally unemployed, part-totally  
 23 unemployed, or partially unemployed for any week in which the  
 24 department finds that the individual:

25 (1) is on a vacation week; and

26 (2) is receiving, or has received, remuneration from the employer  
 27 for that week.

28 (b) Subsection (a) does not apply to an individual whose employer  
 29 fails to comply with a department rule or policy regarding the filing of  
 30 a notice, report, information, or claim in connection with an individual;  
 31 group; or mass separation arising from the vacation period.

32 SECTION 4. IC 22-4-3-5, AS AMENDED BY P.L.6-2012,  
 33 SECTION 152, IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Except as provided in  
 35 subsection (c) and Subject to subsection (b), an individual is not totally  
 36 unemployed, part-totally unemployed, or partially unemployed for any  
 37 week in which the department finds the individual:

38 (1) is on a vacation week; and

39 (2) has not received remuneration from the employer for that  
 40 week, because of:

41 (A) a written contract between the employer and the  
 42 employees; or



1 (B) the employer's regular vacation policy and practice.

2 (b) Subsection (a) applies only if the department finds that the  
3 individual has a reasonable assurance that the individual will have  
4 employment available with the employer after the vacation period ends.

5 ~~(c) Subsection (a) does not apply to an individual whose employer~~  
6 ~~fails to comply with a department rule or policy regarding the filing of~~  
7 ~~a notice, report, information, or claim in connection with an individual,~~  
8 ~~group, or mass separation arising from the vacation period.~~

9 SECTION 5. IC 22-4-5-1, AS AMENDED BY P.L.2-2011,  
10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2014]: Sec. 1. (a) "Deductible income" wherever used in this  
12 article, means income deductible from the weekly benefit amount of an  
13 individual in any week, and shall include, but shall not be limited to,  
14 any of the following:

15 (1) Remuneration for services from employing units, whether or  
16 not such remuneration is subject to contribution under this article,  
17 except as provided in subsection (c).

18 (2) Dismissal pay.

19 (3) Vacation pay.

20 (4) Pay for idle time.

21 (5) Holiday pay.

22 (6) Sick pay.

23 (7) Traveling expenses granted to an individual by an employing  
24 unit and not fully accounted for by such individual.

25 (8) Net earnings from self-employment.

26 (9) Payments in lieu of compensation for services.

27 (10) Awards by the national labor relations board of additional  
28 pay, back pay, or for loss of employment, or any such payments  
29 made under an agreement entered into by an employer, a union,  
30 and the National Labor Relations Board.

31 (11) Payments made to an individual by an employing unit  
32 pursuant to the terms of the Fair Labor Standards Act (Federal  
33 Wage and Hour Law, 29 U.S.C. 201 et seq.).

34 (12) This subdivision applies to initial claims for unemployment  
35 filed for a week that begins after March 14, 2008, and before  
36 October 1, 2011. For a week in which a payment is actually  
37 received by an individual, payments made by an employer to an  
38 individual who accepts an offer from the employer in connection  
39 with a layoff or a plant closure.

40 (13) This subdivision applies to initial claims for unemployment  
41 filed for a week that begins after March 14, 2008, and before  
42 October 1, 2011. Except as provided in subsection (c)(2), the part



of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:

(A) occurs after an individual receives the payment; and

(B) was used under the terms of a written agreement to compute the payment.

(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than the individual's base period employer or employers.

(c) For the purpose of deductible income only, remuneration for services from employing units does not include:

(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or

(2) for initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011, compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.

(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement **if the eligibility for benefits is conditioned upon the signing of a release of employment related claims against the claimant's employer.**

(e) Deductible income does not include any payments made to an individual by a court system under a summons for jury service.

SECTION 6. IC 22-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the ~~same~~ **is actually paid: vacation occurs.**

(b) The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of ~~his~~ **the individual's** claim.

(c) Pay for:



- (1) idle time;
- (2) sick pay;
- (3) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;
- (4) earnings from self-employment;
- (5) awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment; ~~or~~
- (6) ~~any such~~ payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; ~~and or~~
- (7) payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act;

shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if ~~such~~ payments made pursuant to the provisions of the National Labor Relations Act or of the Fair Labor Standards Act or through agreement with a union under subsection (c)(5) are not, by the terms of the order or agreement under which ~~said the~~ payments are made, allocated to any designated week or weeks, then, and in such cases, such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(b) ~~(d)~~ Holiday pay which is paid not later than the normal pay day for the pay period in which the holiday occurred shall be deemed to constitute deductible income with respect to the week for in which such payments are made. Holiday pay which is paid after the normal pay day for the pay period in which the holiday occurred shall be considered as deductible income in and with respect to the week in which the same is actually paid: **occurs.**

(c) ~~(e)~~ Payment of vacation pay if made prior to the vacation period or not later than the normal pay day for the pay period in which the vacation was taken; shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made. Payment of vacation pay made subsequent to the normal pay day for the pay period in which the vacation was taken shall be deemed deductible income with respect to the week in which such payment is made.

SECTION 7. IC 22-4-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. Prior to January 1, 1978, "employer" means any employing unit which for some portion of a day, but not necessarily simultaneously; in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or preceding calendar year, has or had in employment;



and/or has incurred liability for wages payable to one (1) or more individuals (irrespective of whether the same individuals are or were employed in each such day); or any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more, except as provided in IC 22-4-7-2(h). Subsequent to December 31, 1977,

**(a) Before January 1, 2015, "employer" means:**

**(1)** any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding year, has or had in employment, and/or has incurred liability for wages payable to, one (1) or more individuals (irrespective of whether the same individual or individuals are or were employed in each such day); or

**(2)** any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more, except as provided in ~~IC 22-4-7-2(h); (e); and (i);~~ **section 2(e), 2(h), and 2(i) of this chapter.**

**(b) After December 31, 2014, "employer" means either of the following:**

**(1) An employing unit that has incurred liability for wages payable to one (1) or more individuals.**

**(2) An employing unit that in any calendar quarter during the current or preceding calendar year paid for service in employment wages of one dollar (\$1) or more, except as provided in section 2(e), 2(h), and 2(i) of this chapter.**

**(c)** For the purpose of this definition, if any week includes both December 31, and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week.

**(d)** For purposes of this section, "employment" shall include services which would constitute employment but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the board (pursuant to IC 22-4-22) and an agency charged with the administration of any other state or federal unemployment compensation law.

SECTION 8. IC 22-4-13-1.1, AS AMENDED BY P.L.154-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1.1. (a) Notwithstanding any other provisions of





1 this article, if an individual knowingly:

2 (1) fails to disclose amounts earned during any week in the  
3 individual's waiting period, benefit period, or extended benefit  
4 period; or

5 (2) fails to disclose or has falsified any fact;

6 that would disqualify the individual for benefits, reduce the individual's  
7 benefits, or render the individual ineligible for benefits or extended  
8 benefits, the individual forfeits any wage credits earned or any benefits  
9 or extended benefits that might otherwise be payable to the individual  
10 for ~~the period~~ **any week** in which the failure to disclose or falsification  
11 ~~occurs~~. **caused benefits to be paid improperly.**

12 (b) In addition to amounts forfeited under subsection (a), an  
13 individual is subject to the following civil penalties for each instance  
14 in which the individual knowingly fails to disclose or falsifies any fact  
15 that if accurately reported to the department would disqualify the  
16 individual for benefits, reduce the individual's benefits, or render the  
17 individual ineligible for benefits or extended benefits:

18 (1) For the first instance, an amount equal to twenty-five percent  
19 (25%) of the benefit overpayment.

20 (2) For the second instance, an amount equal to fifty percent  
21 (50%) of the benefit overpayment.

22 (3) For the third and each subsequent instance, an amount equal  
23 to one hundred percent (100%) of the benefit overpayment.

24 (c) The department's determination under this section constitutes an  
25 initial determination under IC 22-4-17-2(a) and is subject to a hearing  
26 and review under IC 22-4-17-3 through IC 22-4-17-15.

27 (d) Interest and civil penalties collected under this chapter shall be  
28 deposited as follows:

29 (1) Fifteen percent (15%) of the amount collected shall be  
30 deposited in the unemployment insurance benefit fund established  
31 under IC 22-4-26-1.

32 (2) The remainder of the amount collected shall be deposited in  
33 the special employment and training services fund established  
34 under IC 22-4-25-1.

35 SECTION 9. IC 22-4-15-1, AS AMENDED BY P.L.175-2009,  
36 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2014]: Sec. 1. (a) ~~With respect to benefit periods established~~  
38 ~~on and after July 6, 1980; an individual who has voluntarily left the~~  
39 ~~individual's most recent employment without good cause in connection~~  
40 ~~with the work or who was discharged from the individual's most recent~~  
41 ~~employment for just cause~~ **Regarding an individual's most recent**  
42 **separation from employment before filing an initial or additional**



**claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause** is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

**(1) the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of at least eight (8) weeks; and**

**(2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).**

If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next



higher dollar.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions



1 in this law (or any applicable federal unemployment  
2 compensation law), relating to availability for work, active search  
3 for work, or refusal to accept work. For purposes of this  
4 subdivision, the term "suitable employment" means with respect  
5 to an individual, work of a substantially equal or higher skill level  
6 than the individual's past adversely affected employment (as  
7 defined for purposes of the Trade Act of 1974), and wages for  
8 such work at not less than eighty percent (80%) of the individual's  
9 average weekly wage as determined for the purposes of the Trade  
10 Act of 1974.

11 (6) An individual is not subject to disqualification because of  
12 separation from the individual's employment if:

13 (A) the employment was outside the individual's labor market;

14 (B) the individual left to accept previously secured full-time  
15 work with an employer in the individual's labor market; and

16 (C) the individual actually became employed with the  
17 employer in the individual's labor market.

18 (7) An individual who, but for the voluntary separation to move  
19 to another labor market to join a spouse who had moved to that  
20 labor market, shall not be disqualified for that voluntary  
21 separation, if the individual is otherwise eligible for benefits.  
22 Benefits paid to the spouse whose eligibility is established under  
23 this subdivision shall not be charged against the employer from  
24 whom the spouse voluntarily separated.

25 (8) An individual shall not be subject to disqualification if the  
26 individual voluntarily left employment or was discharged due to  
27 circumstances directly caused by domestic or family violence (as  
28 defined in IC 31-9-2-42). An individual who may be entitled to  
29 benefits based on this modification may apply to the office of the  
30 attorney general under IC 5-26.5 to have an address designated by  
31 the office of the attorney general to serve as the individual's  
32 address for purposes of this article.

33 As used in this subsection, "labor market" means the area surrounding  
34 an individual's permanent residence, outside which the individual  
35 cannot reasonably commute on a daily basis. In determining whether  
36 an individual can reasonably commute under this subdivision, the  
37 department shall consider the nature of the individual's job.

38 (d) "Discharge for just cause" as used in this section is defined to  
39 include but not be limited to:

40 (1) separation initiated by an employer for falsification of an  
41 employment application to obtain employment through  
42 subterfuge;



(2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;

(3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers;

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or

(9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

(1) A report of a law enforcement agency (as defined in IC 10-13-3-10).

(2) A protection order issued under IC 34-26-5.

(3) A foreign protection order (as defined in IC 34-6-2-48.5).

(4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

SECTION 10. IC 22-4-15-2, AS AMENDED BY P.L.12-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;

(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment



unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);



1 rounded (if not already a multiple of one dollar (\$1)) to the next  
2 higher dollar.

3 (e) In determining whether or not any such work is suitable for an  
4 individual, the department shall consider:

5 (1) the degree of risk involved to such individual's health, safety,  
6 and morals;

7 (2) the individual's physical fitness and prior training and  
8 experience;

9 (3) the individual's length of unemployment and prospects for  
10 securing local work in the individual's customary occupation; and

11 (4) the distance of the available work from the individual's  
12 residence.

13 However, work under substantially the same terms and conditions  
14 under which the individual was employed by a base-period employer,  
15 which is within the individual's prior training and experience and  
16 physical capacity to perform, shall be considered to be suitable work  
17 unless the claimant has made a bona fide change in residence which  
18 makes such offered work unsuitable to the individual because of the  
19 distance involved. During the fifth through the eighth consecutive week  
20 of claiming benefits, work is not considered unsuitable solely because  
21 the work pays not less than ninety percent (90%) of the individual's  
22 prior weekly wage. After eight (8) consecutive weeks of claiming  
23 benefits, work is not considered unsuitable solely because the work  
24 pays not less than eighty percent (80%) of the individual's prior weekly  
25 wage. However, work is not considered suitable under this section if  
26 the work pays less than Indiana's minimum wage as determined under  
27 IC 22-2-2. For an individual who is subject to section 1(c)(8) of this  
28 chapter, the determination of suitable work for the individual must  
29 reasonably accommodate the individual's need to address the physical,  
30 psychological, legal, and other effects of domestic or family violence.

31 (f) Notwithstanding any other provisions of this article, no work  
32 shall be considered suitable and benefits shall not be denied under this  
33 article to any otherwise eligible individual for refusing to accept new  
34 work under any of the following conditions:

35 (1) If the position offered is vacant due directly to a strike,  
36 lockout, or other labor dispute.

37 (2) If the remuneration, hours, or other conditions of the work  
38 offered are substantially less favorable to the individual than  
39 those prevailing for similar work in the locality.

40 (3) If as a condition of being employed the individual would be  
41 required to join a company union or to resign from or refrain from  
42 joining a bona fide labor organization.



(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

(j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn by an employer after an individual:

(1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment;





or

(2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment.

(k) For purposes of this article, a drug test is not found to be positive unless:

(1) a second confirmation test:

(A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and

(B) has been reviewed by a licensed physician and:

(i) the laboratory results described in clause (A);

(ii) the individual's medical history; and

(iii) other relevant biomedical information;

confirm a positive result of the drug tests; or

(2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test.

(h) (k) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding.

SECTION 11. IC 22-4-15-6.1, AS AMENDED BY P.L.175-2009, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

(b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

(1) A felony.

(2) A Class A misdemeanor.

(3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).

(4) Battery on another individual while on the employer's property or during working hours.

(5) Theft or embezzlement.

(6) Fraud.

(c) An employer:



(1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and  
 (2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge.

(d) Evidence that a discharged employee's conduct did not result in:

(1) a prosecution for an offense; or

(2) a conviction of an offense;

may be presented.

(e) (c) If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

(f) (d) Lawful conduct not otherwise prohibited by an employer is not gross misconduct under this section.

SECTION 12. IC 22-4-15-8, AS AMENDED BY P.L.108-2006, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. Notwithstanding any other provisions of this article, benefits otherwise payable for any week under this article shall not be denied or reduced on account of any payment or payments the claimant receives, has received, will receive, or accrues right to receive with respect to or based upon such week under a private unemployment benefit plan financed in whole or part by the claimant's employer or former employer. No claim for repayment of benefits and no deduction from benefits otherwise payable under this article shall be made under IC 22-4-13-1(d) and IC 22-4-13-1(e) because of payments which have been or will be made under such private unemployment benefit plans. **However, a payment of private unemployment benefits that is conditional upon the signing of a release of employment related claims against the claimant's employer is severance pay and is deductible income as prescribed by IC 22-4-5-2.**

SECTION 13. IC 22-4-17-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) Any decision of the review board, in the absence of appeal as provided in this section, shall become final ~~fifteen (15)~~ **thirty (30)** days after the date the decision is mailed to the interested parties. The review board shall mail with the decision a notice informing the interested parties of their right to appeal the decision to the court of appeals of Indiana. The notice shall inform the parties that they have ~~fifteen (15)~~ **thirty (30)** days from the date of mailing within which to file a notice of intention to appeal, and that in order to perfect the appeal they must request the preparation of a transcript in accordance with section 12 of this chapter.



1 (b) If the commissioner or any party adversely affected by the  
2 decision files with the review board a notice of an intention to appeal  
3 the decision, that action shall stay all further proceedings under or by  
4 virtue of the review board decision for a period of thirty (30) days from  
5 the date of the filing of the notice, and, if the appeal is perfected,  
6 further proceedings shall be further stayed pending the final  
7 determination of the appeal. However, if an appeal from the decision  
8 of the review board is not perfected within the time provided for by this  
9 chapter, no action or proceeding shall be further stayed.

10 SECTION 14. IC 22-4-25-1, AS AMENDED BY P.L.182-2009(ss),  
11 SECTION 368, IS AMENDED TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) There is created in the state  
13 treasury a special fund to be known as the special employment and  
14 training services fund. All interest on delinquent contributions and  
15 penalties collected under this article, together with any voluntary  
16 contributions tendered as a contribution to this fund, shall be paid into  
17 this fund. The money shall not be expended or available for  
18 expenditure in any manner which would permit their substitution for  
19 (or a corresponding reduction in) federal funds which would in the  
20 absence of said money be available to finance expenditures for the  
21 administration of this article, but nothing in this section shall prevent  
22 said money from being used as a revolving fund to cover expenditures  
23 necessary and proper under the law for which federal funds have been  
24 duly requested but not yet received, subject to the charging of such  
25 expenditures against such funds when received. The money in this fund  
26 shall be used by the board for the payment of refunds of interest on  
27 delinquent contributions and penalties so collected, for the payment of  
28 costs of administration which are found not to have been properly and  
29 validly chargeable against federal grants or other funds received for or  
30 in the employment and training services administration fund, on and  
31 after July 1, 1945. Such money shall be available either to satisfy the  
32 obligations incurred by the board directly, or by transfer by the board  
33 of the required amount from the special employment and training  
34 services fund to the employment and training services administration  
35 fund. The board shall order the transfer of such funds or the payment  
36 of any such obligation or expenditure and such funds shall be paid by  
37 the treasurer of state on requisition drawn by the board directing the  
38 auditor of state to issue the auditor's warrant therefor. Any such warrant  
39 shall be drawn by the state auditor based upon vouchers certified by the  
40 board or the commissioner. The money in this fund is hereby  
41 specifically made available to replace within a reasonable time any  
42 money received by this state pursuant to 42 U.S.C. 502, as amended,



1 which, because of any action or contingency, has been lost or has been  
 2 expended for purposes other than or in amounts in excess of those  
 3 approved by the bureau of employment security. The money in this  
 4 fund shall be continuously available to the board for expenditures in  
 5 accordance with the provisions of this section **and for the prevention,**  
 6 **detection, and recovery of delinquent contributions, penalties, and**  
 7 **improper benefit payments,** and shall not lapse at any time or be  
 8 transferred to any other fund, except as provided in this article. Nothing  
 9 in this section shall be construed to limit, alter, or amend the liability  
 10 of the state assumed and created by IC 22-4-28, or to change the  
 11 procedure prescribed in IC 22-4-28 for the satisfaction of such liability,  
 12 except to the extent that such liability may be satisfied by and out of the  
 13 funds of such special employment and training services fund created  
 14 by this section.

15 (b) Whenever the balance in the special employment and training  
 16 services fund exceeds eight million five hundred thousand dollars  
 17 (\$8,500,000), the board shall order payment of the amount that exceeds  
 18 eight million five hundred thousand dollars (\$8,500,000) into the  
 19 unemployment insurance benefit fund.

20 (c) Subject to the approval of the board, ~~and~~ the availability of  
 21 funds, **and subsection (e),** on ~~July 1, 2008;~~ ~~and each subsequent July~~  
 22 ~~1~~ **each year** the commissioner shall release:

23 (1) one million dollars (\$1,000,000) to the state educational  
 24 institution established under IC 21-25-2-1 for training provided  
 25 to participants in apprenticeship programs approved by the United  
 26 States Department of Labor, Bureau of Apprenticeship and  
 27 Training;

28 (2) four million dollars (\$4,000,000) to the state educational  
 29 institution instituted and incorporated under IC 21-22-2-1 for  
 30 training provided to participants in joint labor and management  
 31 apprenticeship programs approved by the United States  
 32 Department of Labor, Bureau of Apprenticeship and Training;

33 (3) two hundred fifty thousand dollars (\$250,000) for journeyman  
 34 upgrade training to each of the state educational institutions  
 35 described in subdivisions (1) and (2);

36 (4) four hundred thousand dollars (\$400,000) ~~annually~~ for  
 37 training and counseling assistance:

38 (A) provided by Hometown Plans under 41 CFR 60-4.5; and

39 (B) approved by the United States Department of Labor,  
 40 Bureau of Apprenticeship and Training;

41 to individuals who have been unemployed for at least four (4)  
 42 weeks or whose annual income is less than twenty thousand



dollars (\$20,000); and

(5) three hundred thousand dollars (\$300,000) ~~annually~~ for training and counseling assistance provided by the state institution established under IC 21-25-2-1 to individuals who have been unemployed for at least four (4) weeks or whose annual income is less than twenty thousand dollars (\$20,000) for the purpose of enabling those individuals to apply for admission to apprenticeship programs offered by providers approved by the United States Department of Labor, Bureau of Apprenticeship and Training.

~~(d) The funds released under subsection (c)(4) through (c)(5):~~

~~(1) shall be considered part of the amount allocated under section 2.5 of this chapter; and~~

~~(2) do not limit the amount that an entity may receive under section 2.5 of this chapter.~~

~~(e) (d)~~ Each state educational institution described in subsection (c) is entitled to keep ten percent (10%) of the funds released under subsection (c) for the payment of costs of administering the funds. On each June 30 following the release of the funds, any funds released under subsection (c) ~~and not used by the state educational institutions under subsection (e)~~ shall be returned to the special employment and training services fund.

**(e) The funds released under subsection (c)(1) through (c)(5) are subject to performance based standards that are determined by the unemployment insurance board.**

SECTION 15. IC 22-4.1-18-2, AS AMENDED BY P.L.6-2012, SECTION 156, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. The department may grant a ~~general educational development (GED)~~ **an Indiana high school equivalency** diploma to an individual who achieves satisfactory high school level scores on the ~~general educational development (GED)~~ **Indiana high school equivalency** test or any other properly validated test of comparable difficulty designated by the council.

SECTION 16. IC 22-4.1-18-4, AS ADDED BY P.L.7-2011, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The ~~council~~ **department** shall adopt rules under IC 4-22-2 to provide for the implementation and administration of this chapter.

(b) The rules may include the following provisions:

(1) Qualifications of applicants.

(2) Acceptable tests.

(3) Acceptable test scores.



(4) Criteria for retesting.

SECTION 17. IC 22-4.1-18-5, AS ADDED BY P.L.7-2011, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. A high school equivalency certificate or a general educational development (GED) diploma issued under IC 20-20-6 (before its repeal) is equivalent to a ~~general educational development (GED)~~ **an Indiana high school equivalency** diploma issued under this chapter.

SECTION 18. IC 22-4.1-20-4, AS ADDED BY P.L.7-2011, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) Money appropriated by the general assembly for adult education may be used only to reimburse an eligible provider for adult education that is provided to individuals who:

(1) need the education to master a skill that leads to:

(A) the completion of grade 8; or

(B) ~~a general educational development (GED)~~ **an Indiana high school equivalency** diploma under IC 22-4.1-18;

(2) need the education to receive high school credit to obtain a high school diploma; or

(3) have graduated from high school (or received a high school equivalency certificate, ~~or~~ a general educational development (GED) diploma, **or an Indiana high school equivalency diploma**), but who demonstrate basic skill deficiencies in mathematics or English/language arts.

For purposes of reimbursement under this section, the eligible provider may not count an individual who is also enrolled in a school corporation's kindergarten through grade 12 educational program. An individual described in subdivision (3) may be counted for reimbursement by the eligible provider only for classes taken in mathematics and English/language arts.

(b) The council shall provide for reimbursement to an eligible provider under this section for instructor salaries and administrative and support costs. However, the council may not allocate more than fifteen percent (15%) of the total appropriation under subsection (a) for administrative and support costs.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1346, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1346 as introduced.)

Committee Vote: Yeas 7, Nays 4

Representative Gutwein

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1346 be amended to read as follows:

Page 18, line 30, delete "(c)(1) through (c)(5)" and insert "**(c)(4) and (c)(5)**".

Page 18, line 32, delete "department." and insert: "**unemployment insurance board.**".

(Reference is to HB 1346 as printed January 21, 2014.)

LEONARD

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1346, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete line 25, begin a new line blocked left and insert: "**upon the signing of a release of employment related claims against the claimant's employer.**".

Page 15, between lines 22 and 23, begin a new paragraph and insert: "SECTION 11. IC 22-4-15-6.1, AS AMENDED BY P.L.175-2009, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

**EH 1346—LS 7024/DI 102**



(b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

- (1) A felony.
- (2) A Class A misdemeanor.
- (3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).
- (4) Battery on another individual while on the employer's property or during working hours.
- (5) Theft or embezzlement.
- (6) Fraud.

~~(c) An employer:~~

- ~~(1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and~~
- ~~(2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge.~~

~~(d) Evidence that a discharged employee's conduct did not result in:~~

- ~~(1) a prosecution for an offense; or~~
- ~~(2) a conviction of an offense;~~

~~may be presented.~~

~~(e) (c)~~ If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

~~(f) (d)~~ Lawful conduct not otherwise prohibited by an employer is not gross misconduct under this section."

Page 15, line 35, after "payment" insert **"of private unemployment benefits"**.

Page 18, line 30, delete "(c)(4) and (c)(5)" and insert **"(c)(1) through (c)(5)"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1346 as reprinted January 28, 2014.)

BOOTS, Chairperson

Committee Vote: Yeas 7, Nays 1.

